



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

20th Meeting, 2013 (Session 4)

Tuesday 18 June 2013

The Committee will meet at 10.00 am in Committee Room 6.

1. **Decisions on taking business in private:** The Committee will decide whether to take items 6 and 7 in private.

2. **Police and Fire Reform (Scotland) Act 2012 - implementation of the fire provisions:** The Committee will take evidence from—

John Duffy, Scottish Secretary, Fire Brigades Union;

Sarah Duncan, Regional Organiser, UNISON;

Nick Croft, Corporate Policy and Strategy Manager, City of Edinburgh Council;

and then from—

Pat Watters, Chair, Scottish Fire and Rescue Service Board;

Alasdair Hay, Chief Officer, and Dave Boyle, Assistant Chief Officer, Director of Service Delivery West, Scottish Fire and Rescue Service.

3. **Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012:** The Committee will consider correspondence on the operation of the Act.
4. **Inquiry into purposeful activity in prisons:** The Committee will consider the joint response from the Scottish Government and the Scottish Prison Service to the Committee's report.
5. **Fatal road collisions:** The Committee will consider any further action.

6. **Anti-social Behaviour, Crime and Policing Bill (UK Parliament legislation):**
The Committee will consider its approach to the legislative consent memorandum lodged by Kenny MacAskill (LCM(S4)22.1).
7. **Work programme:** The Committee will consider its work programme.

Irene Fleming
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
Email: irene.fleming@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk (private paper) J/S4/13/20/1 (P)

Agenda item 3

Paper by the clerk J/S4/13/20/2

Agenda item 4

Paper by the clerk J/S4/13/20/3

Agenda item 5

Paper by the clerk J/S4/13/20/4

Agenda item 6

Paper by the clerk and SPICe (private paper) J/S4/13/20/5 (P)

Agenda item 7

Paper by the clerk (private paper) J/S4/13/20/6 (P)

Justice Committee

20th Meeting, 2013 (Session 4), Tuesday, 18 June 2013

Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

Note by the clerk

Purpose

1. This paper invites the Committee to consider responses received in relation to recent events regarding the operation of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 and police tactics in dealing with protests.

Background

2. At its meeting on 23 April, the Committee considered recent issues relating to the operation of the 2012 Act and police tactics in dealing with protests, such as the incident which occurred in the Gallowgate in Glasgow on 16 March. The Committee agreed to write to the Lord Advocate, the Minister for Community Safety and Legal Affairs, the Chief Constable and the Scottish Police Authority in relation to these matters. Their responses are summarised below.

Lord Advocate

3. The Committee sought the Lord Advocate's views on implementation of the 2012 Act, whether any difficulties had been experienced in interpreting its provisions, and whether he had updated his guidelines on the Act in light of recent events.

4. In his response (Annexe A), the Lord Advocate confirmed that, from the perspective of prosecutors, the 2012 Act is "operating well and in the way intended by the Scottish Parliament". He also stated that "procurators fiscal are proportionate in the cases taken up and ... the courts convict in a high proportion of cases taken up which is validation of the judgement of procurators fiscal".¹

5. He further indicated that he will continue to keep his guidelines on the operation of the Act under review and would be happy to consider any suggested revisions to the guidelines "from whatever source". However, he clarified that his guidelines do not refer to policing, "which is entirely a matter for the Chief Constable", and therefore "it would not be appropriate to amend the guidelines to include matters which are related to the policing of football matches".²

Minister for Community Safety and Legal Affairs

6. The Minister for Community Safety and Legal Affairs was invited to confirm whether the Scottish Government had any plans at this stage to conduct an interim

¹ Correspondence to the Justice Committee from the Lord Advocate (22 May 2013), page 2.

² Correspondence to the Justice Committee from the Lord Advocate (22 May 2013), page 3.

review of the operation of the Act. (The Act requires the Scottish Government to report to the Parliament by 1 August 2015 on the operation of the offences in the Act over two full football seasons.)

7. The Minister stated in her response (Annexe B) that “steps are already in hand to collect the evidence necessary to inform the report to Parliament”, and that this “process includes commissioning an independent evaluation of the offence of ‘offensive behaviour at regulated football matches’, under section 1 of the Act”. She confirmed that “the Act makes specific provision for changes to the nature of the offences, and that the Government remains open to using those powers to make appropriate changes in response to consideration of the report to Parliament on the operation of the Act”.³

8. Finally, she reiterated her view that awaiting evidence on the operation of the Act is “the best course of action” and confirmed that the Scottish Government is due to publish the first annual statistics and analysis of the offences committed under the Act over the first year of its operation.⁴ It is understood that these statistics are to be published on Friday 14 June and so they will therefore be circulated to Members as soon as they become available.

The Chief Constable and Scottish Police Authority

9. The Chief Constable and Scottish Police Authority (SPA) were asked for further information regarding the policy which underpins decisions taken on tactics employed by the police to deal with situations such as the one that arose in the Gallowgate in Glasgow on 16 March.

Chief Constable

10. In his response (Annexe D), the Chief Constable provided an overview of the policing operation on that day. He stated that, as a consequence of the incident in the Gallowgate on 16 March, an “internal review of our handling of the event from a quality of service perspective and a separate review into the specific public order tactics used on the day have been conducted”.⁵ He confirmed that, as part of this review, the public order element of the incident was reviewed by a senior officer with significant experience in public order policing and with no prior involvement in the incident. This officer concluded that “the public order tactic was both proportionate and appropriate in the circumstances, that it was implemented efficiently and professionally and that it remained in place for no longer than was reasonably necessary”.⁶

11. The Chief Constable added that “there have been various persons alleging that there is video footage of police assaults and ‘heavy handedness’ but the officers who have investigated these complaints have not found, or had provided to them, any evidence by video or otherwise of any police misconduct”.⁷ He believes that when

³ Correspondence to the Justice Committee from the Minister for Community Safety and Legal Affairs (10 May 2013), page 1.

⁴ Correspondence to the Justice Committee from the Minister for Community Safety and Legal Affairs (10 May 2013), page 2.

⁵ Correspondence to the Justice Committee from the Chief Constable (21 May 2013), page 1.

⁶ Correspondence to the Justice Committee from the Chief Constable (21 May 2013), page 2.

⁷ Correspondence to the Justice Committee from the Chief Constable (21 May 2013), page 3.

the video footage of the events becomes available, it will “show that the actions of my officers were necessary, justified and proportionate”.⁸

Scottish Police Authority

12. Vic Emery, Chair of the SPA, stated that, “as your request relates to information on police considerations when deciding the appropriate tactics to deploy in a situation such as the one mentioned, I will leave it to the Chief Constable to inform the Committee on that in the first instance”. In response to the reference in the Committee’s letter that it is not seeking to intervene in the operational decisions on the police, Mr Emery said that that it was appropriate for the SPA to “provide legitimate and constructive Board challenge on all police related matters and this includes such issues as the one you raise”. He went on to say that the SPA has “an obligation and responsibility to promote and support continuous improvement in policing, and that cannot be done effectively without understanding how and why policing decisions are made”. He added that “this is good governance, not intervention”.

13. Finally, he advised that the SPA Complaints and Conduct Committee has a wide-ranging remit to look at the conduct of policing and that its members had already given some consideration informally to this issue prior to formally meeting in May.

Next steps

14. The Committee is invited to consider whether, in light of the correspondence received and publication of the first annual statistics and analysis of the offences committed under the Act, it wishes to undertake any further action on this matter at this stage.

⁸ Correspondence to the Justice Committee from the Chief Constable (21 May 2013), page 4.

Correspondence from the Lord Advocate on the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

Thank you for your letter of 26 April 2013.

Before I deal with the points raised by you in your letter I would wish to make a number of observations of my own.

Firstly, the Offensive Behaviour Act contains no provisions on policing. Policing is entirely a matter for the Chief Constable and should be free of any interference. If there are any concerns about policing then there are avenues through which complaints can be made, investigated and adjudicated upon. In relation to recent events at the Gallowgate, which are subject to criminal proceedings, my understanding is that the complaints relate to the policing of a demonstration for which there was no lawful authority. As indicated there are mechanisms to deal with this but I would simply make the point that as far as I can see the events in the Gallowgate had little or nothing to do with this Act.

Secondly, I would make a more general point that there are no different criteria applied to behaviour outwith football stadiums than behaviour within football stadiums and surrounding areas. Behaviour that is criminal carried out in a public street is equally criminal if carried out in a football stadium.

Thirdly, it is clear to me that there is still a problem with offensive behaviour at football matches. It is recognised that there have been improvements in behaviour at football matches with a significant reduction in offensive behaviour. However there are still instances of misbehaviour, such as that seen recently at Berwick and the under 17s Old Firm match at Firhill.

With regard to the questions posed in your letter I can advise you that from the perspective of prosecutors the legislation is operating well and in the way intended by the Scottish Parliament. I can further advise you that no successful ECHR challenge has been taken to the legislation; in fact no ECHR challenge has been taken to the legislation which is significant given the litigious nature of some Scottish lawyers.

I should say something about proportionality. It is important that prosecution policy as set out in writing and in operation is proportionate. This is achieved in a number of ways. Firstly a case will only be taken up where there is sufficient credible and reliable admissible evidence. This requires the prosecutor to assess the quality of the evidence to ensure that there is a reasonable prospect of the evidence being admitted and regarded by the court as being credible and reliable. How the evidence fits together with and is supported by other evidence is part of the process of determining credibility and reliability. Secondly, a prosecutor will assess whether a prosecution is compatible with the European Convention of Human Rights, Articles 6 [fair trial], 11 [freedom of assembly and association – if engaged] and 10 [freedom of speech]. Thirdly, a prosecutor will then determine whether the prosecution's in the public interest. This will involve the prosecutor looking at the alleged conduct, assessing its seriousness and placing it in context and looking at the antecedents of

the accused. If the prosecutor considers that prosecution is merited then the case will proceed to court where the independent court will determine guilt or innocence by due process where the accused is legally represented, if requested, in the context of procedural rules to ensure fair trial. The court is of course a public authority and is required to comply with the European Convention of Human Rights. So for example if the court was of the view that to convict would breach article 10 then it could not do so and would require to acquit.

With regard to whether prosecutors are proportionate in their decision making I would refer the committee to the statistics on contraventions of section 1 of the Act to December 2012, 218 charges were reported to Procurators Fiscal. 18 [7%] are pending decision. 23 [11%] no proceedings were taken. 177 [82%] proceedings were raised. Of the cases which have concluded [64] 54 [84%] have resulted in conviction. Conviction in 43 of those cases was as a result of a plea of guilty and 11 were after trial. This in my view demonstrates that Procurators Fiscal are proportionate in the cases taken up and that the courts convict in a high proportion of cases taken up which is a validation of the judgement of Procurators Fiscal.

There have been a number of important decisions by the Appeal court which are worthy of note by the committee. The first is the case of Maguire v PF Glasgow [2013 HCJAC 36] which is a case involving a charge of Breach of the Peace for wearing an offensive T-shirt at an Old Firm match. The charge was one of Breach of the Peace, the offence pre dated the Act coming into force. It was argued in the accused's defence that the conviction was a breach of article 10 of the convention [freedom of expression] the accused being engaged in political protest. This was of course an argument expressed during the passage of the Bill. The Appeal court rejected that argument and in upholding the conviction stated, "The court does not consider that the appellant's right of freedom of expression was in any way affected by his arrest and subsequent conviction. Even if the appellant does wish to engage in genuine protests, either in relation to Remembrance Day, the events of "Bloody Sunday" or about the proscription of the INLA, he has plenty of suitable opportunities in which to do so without intentionally provoking serious disturbance, including violence, in the community ..."

In Roberts v PF Paisley the court considered whether a football Banning Order imposed following conviction for singing a sectarian song at a football match at Easter Road was excessive. It was argued that the song sung in a segregated area where no one was offended by the song and no one who may be offended by the song was likely to hear it. The Appeal court, in refusing the Appeal stated: it seems to us that the sheriff was well entitled to make the order which she did. As she tells us in her report she considered the imposition of a banning order and took the view that shouting and singing songs including derogatory sectarian words and phrases contributes to the risk of violent anti-social or other disorderly behaviour. Actual violence or disorder is not a prerequisite for the imposition of such and orders and she considered that it was appropriate in all the circumstances that an exemplary order be imposed. Mr Allan argued on behalf of the appellant that the appellant's conduct took place, he assured us, in a segregated crowd and it was unlikely that anyone who might be offended by the words would hear them. We do not consider that there is any force in that submission. The singing of sectarian songs is understandably a matter of concern to the courts, particularly at football games, and is the source of disorder and violence on occasions which have been given wide publicity.

With regard to my guidelines I keep these under review and will continue to do so. As you know I published the guidelines in draft during the passage of the Bill. I received no comments on them. This remains the case. I am of course happy to consider any suggested revisions to the guidelines (which are publically available) from whatever source. However I would make the point that the guidelines say nothing about policing which is entirely a matter for the Chief Constable. It would not be appropriate to amend the guidelines to include matters which are related to the policing of football matches.

Finally, the committee will note the extraterritorial provisions in the Act which are not contained in Breach of the Peace of section 39 of the Criminal Justice and Licensing Act. These have been applied recently in relation to prosecutions arising out of the recent Berwick Rangers v Rangers match. As the cases are live it would be inappropriate to comment further.

I hope this is of assistance to the Committee.

Frank Mulholland QC
Lord Advocate
22 May 2013

ANNEXE B

**Correspondence from the Minister for Community Safety and Legal Affairs on
the Offensive Behaviour at Football and Threatening Communications
(Scotland) Act 2012**

Thank you for your letter of 26 April about your Committee's consideration of the Act at your meeting on 23 April, asking whether the Government has any plans at this stage to conduct an interim review of the operation of the Act.

As your letter acknowledges, the Act requires that the Government reports to Parliament by 1 August 2015 on the operation of the Act's offences over two full football seasons. The Government fully intends to fulfil that obligation, and steps are already in hand to collect the evidence necessary to inform the report to Parliament. That process includes the commissioning of an independent evaluation of the offence of 'offensive behaviour at regulated football matches', under section 1 of the Act.

As you are aware, the Government responded to concerns expressed by Parliament that an emergency Bill process did not provide sufficient time to consider this legislation and we extended the timetable for the Bill to enable full consideration of the issues. In addition, we readily agreed to the suggestion in the Committee's report on the Bill that it should contain express provision requiring the Government to report to Parliament on the operation of the legislation after it had been in operation for a sufficient length of time to evaluate the evidence of its impact. Furthermore, the Act makes specific provision for change to the nature of the offences, and the Government remains open to using those powers to make appropriate changes in response to consideration of the report to Parliament on the operation of the Act.

I remain of the view that awaiting that evidence on the operation of the Act is the best course of action. However, I am pleased to inform you that the Government will publish next month the first annual statistics and analysis of the offences committed under the Act over the first year of its operation.

I hope this response reassures your committee that the Government is taking proper measures to evaluate the operation of the Act in a way which will provide Parliament with a fully informed and considered report on the Act to meet our statutory obligations.

Roseanna Cunningham
Minister for Community Safety and Legal Affairs
10 May 2013

Correspondence from the Chief Constable on the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

I refer to your correspondence outlining your concerns about the policing of the Green Brigade, by officers of the former Strathclyde Police on Saturday 16 March 2013.

This incident has attracted attention, both in the media and amongst certain sections of football supporters who have been very vocal in expressing their criticism of Police Scotland in the media and on social networking sites. As a consequence, an internal review of our handling of the event from a Quality of Service perspective and a separate review into the specific Public Order tactics used on the day have been conducted. I am now in a position to fully respond to your letter.

I believe it would be helpful if I supplied you with a brief overview of the Policing Operation.

Saturday 16 March 2013 was a particularly busy day for the former Strathclyde Police and due to other ongoing protests involving the Scottish Defence League (SDL) and a counter event by Unite Against Fascism (UAF) there was a large scale public order policing operation in place within Glasgow city centre. The potential threat of disorder was assessed to be high and as a result, a proportionate number of police resources were deployed to facilitate peaceful protest and maximise the safety of the public in general.

On Thursday 14 March the Green Brigade announced their intention to march from the Chrystal Bell Public House in the Gallowgate in Glasgow to Celtic Football Club at Parkhead. The Green Brigade did not have authority to hold a public procession as required by Section 62 of the Civil Government (Scotland) Act 1982 which requires the organisers to give at least 28 days' notice and have approval from the local authority. Their intention to hold the procession was publicised through a variety of media over a period of time, however no formal approach by organisers was made to the police or to the local authority. It was therefore not a lawful demonstration.

The march was publicised as a protest at the number of Celtic football fans who have been arrested and convicted for a variety of football related offences and are now subject of football banning orders and who are also banned by the club.

At approximately 1pm a number of fans began to congregate in the Gallowgate area in and around the Chrystal Bell Public House and there was an initial police deployment of 4 police officers in the area. As information was received that a large group of people were now gathering, a secondary deployment of 25 officers, who were on standby for the other policing operations previously highlighted, was moved to the immediate vicinity and deployed on foot when it became clear that a group were about to set off as a march.

As this stage it became clear that there were between 200-300 demonstrators intending to march and it was the intention of the senior police officer on the ground to facilitate this as a peaceful protest and allow the crowd to 'march' to Celtic

Football Club, with the condition that the protestors remain on the pavement and thereby not compromise their own safety or the safety of other road users. Despite repeated attempts to engage with members of the group, no organisers or leaders were identified and the officers were confronted with demonstrators who were actively avoiding negotiations with the police and clearly not responding to any of their instructions. The conciliatory offer of the police facilitating a peaceful protest was clearly not being accepted and consequently the demonstrators formed up across the width of the road, affecting both lanes of traffic, and began to march.

The senior police officer on the ground was faced with a very large, non-compliant crowd, which was intent on disrupting vehicular and pedestrian traffic in the vicinity, with no means of contacting an organiser or leader to assist in following safety instructions. When an attempt was made to cordon off the road and prevent any further progress of the march, the officers were completely engulfed by an angry mob, many of whom were wearing hoods and had scarves obscuring their faces.

Faced with this rapidly evolving situation, the senior police officer on the ground reasonably believed that the intentions of the group were not peaceful and that a safe environment could not be created to facilitate a 'march'. The decision was then made to rapidly deploy further available resources from the other planned operations in the city to the Gallowgate in support of his officers who were now clearly being overwhelmed and being subjected to violent intimidation and aggressive tactics from the crowd.

I fully accept that the crowd contained protestors who would have been intent on peacefully marching, however there were clearly large numbers of persons within the crowd who were intent on causing large scale disorder. In order to contain the situation and prevent further escalation, the tactical use of a box cordon was employed. This allowed for the movement of the crowd to be brought under control safely and then for the people within the cordon to be dispersed in fewer, more manageable numbers. This tactic was successfully deployed and the crowd was thereafter dispersed.

The use of a box cordon is a recognised approved public order tactic. However, as part of the internal review of this incident the public order element was specifically reviewed by a senior officer with significant experience in public order policing. This officer had no prior involvement in this incident. He concluded that the public order tactic was both proportionate and appropriate in the circumstances, that it was implemented efficiently and professionally and that it remained in place for no longer than was reasonably necessary.

I can confirm that 13 arrests were made as a direct result of the protest and 'march', resulting in 12 persons being reported to the Crown Office and Procurator Fiscal Service (COPFS) and a juvenile offender being reported to the Scottish Children's Reporter. The offences libelled all relate to public disorder and include 7 persons charged with a Breach of the Peace and others charged with assaults on police and resisting arrest. In addition, enquiries are continuing to identify 7 persons who have been captured on CCTV committing various public order offences and it is anticipated that, following identification, they will also be reported to COPFS. Following this incident, I set up a dedicated team of specialist officers to investigate all related complaints about the police. As you will be aware we have formal processes and guidance in place which ensures that all such complaints are

thoroughly investigated and are subject to a high level of scrutiny. Over the past month a detailed investigation has taken place and all persons who have engaged in the complaints process have been interviewed and their allegations recorded and investigated. In addition, all available video and CCTV footage has been reviewed.

The majority of complaints that we have received were made by e-mail to the former Strathclyde Police. Following receipt, the originator of each e-mail was contacted and asked to provide contact details in order that a member of the enquiry team could contact them to ascertain the specific nature of their complaint(s), whether they were a witness to the incident or had viewed footage of the march on social network sites or other media, and where relevant, to note statements and gather evidence. In many cases, despite repeated attempts, these potential witnesses have failed, or refused, to engage with the enquiry team.

In total there have been 72 members of the public who have made complaints either directly to the police or via their MPs, MSPs and Local Councillors in relation to concerns they have about the policing of this incident. These concerns vary from complaints about police 'heavy handedness' to issues about wasting tax payers' money. In the very large majority of cases the complaints that have been made are generic and relate to unspecified allegations of misconduct, against unspecified officers, mostly referring to video footage seen on television or on social media sites. Of these, 34 have refused to engage with the police beyond their initial e-mail, despite a number of attempts to contact them and 5 have withdrawn their complaint. Of the remaining 33 people who have complained, few were actually present at incident and correspondence has come from all over Scotland, and as far afield as the very South of England, and even Cyprus. Many of these people are not making specific complaints and merely wish to register their disapproval at the alleged treatment of Celtic fans.

Six of the complainers have made specific allegations about the conduct of individual officers. I do not propose to discuss the details of each allegation but two complaints were recorded alleging assault by police officers. One of the complainers subsequently decided to withdraw her complaint and the other allegation has been fully investigated and a report has been submitted to the Crown Office and Procurator Fiscal Service. Whilst I am limited to what I can say at this stage, I can confirm with certainty that no person has alleged that they have been struck with a police baton. With regard to the 4 other complaints against individual officers, 3 relate to complaints incivility and the other relates to excessive force, which was made by a member of the public who viewed one of the arrests on the media site YouTube.

I acknowledge that there has been strong condemnation in certain sections of the media and the public about what they believe was inappropriate behaviour by my officers, but I do not accept that this was the case. There have been various persons alleging that there is video footage of police assaults and 'heavy handedness' but the officers who have investigated these complaints have not found, or had provided to them, any evidence by video or otherwise of any police misconduct.

For clarity, the Civic Government (Scotland) Act 1982 makes specific provision for processions of this type to ensure that the police and local authorities can prepare for and facilitate lawful protest, while at the same time ensuring the safety of the marchers and other members of the public. Regardless of the Green Brigade not

having the required authorisation, it was decided that a peaceful protest would be facilitated and the police action on the day was a dynamic response to prevent further escalation and disorder and thereby keeping the public safe from a rapidly evolving and potential harmful public order incident.

I have attempted to provide an overall view of the events and investigation as it unfolded and hope that this may assist you and further inform members of the Justice Committee.

It is my belief that when the outstanding criminal proceedings are concluded video footage available will allow both you and your constituents a more complete picture of the events that day and show that the actions of my officers were necessary, justified and proportionate. In the meantime I trust this is helpful.

Chief Constable Stephen House
Police Scotland
21 May 2013

Correspondence from the Scottish Police Authority on the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

Thank you for your letter of 26 April in the context of your consideration of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. In that letter the Committee requests further information relating to the policy underpinning police tactics to deal with situations such as that which arose in the Gallowgate, Glasgow on 16 March. You also wrote in similar terms to the Chief Constable.

As your request relates to information on police considerations when deciding the appropriate tactics to deploy in a situation such as the one mentioned, I will leave it to the Chief Constable to inform the Committee on that in the first instance.

I note the reference in your letter to the Justice Committee not seeking to intervene in the operational decisions of the police. There is no definition of what constitutes operational versus non-operational decisions within the new legislation. However, I regard your question to the Chief Constable as a legitimate part of the greater openness and enhanced scrutiny of all aspects of policing that the new legislative arrangements envisage and one within the parameters of what the SPA itself will operate within.

As an Authority, it is appropriate for us to provide legitimate and constructive Board challenge on all police related matters and this includes such issues as the one you raise. We have an obligation and responsibility to promote and support continuous improvement in policing, and that cannot be done effectively without understanding how and why policing decisions are made. This is good governance, not intervention.

You will wish to be aware that, in response to a question from an SPA member at the Authority meeting on 9 May, the Chief Constable provided an oral update on how he feels this legislation is working, including an explanation of the incident on 16 March. Members of the SPA Complaints and Conduct Committee also have a wide-ranging remit to look at the conduct of policing, even where a direct complaint may not have been lodged with the SPA. This Committee will meet formally for the first time later in May, its members have already given some consideration informally to the very issue that you have raised, and may choose to come back to it in due course.

Although the Chief Constable spoke in public session yesterday, given the potential constraints that police commanders may feel in discussing in an open forum the tactics they use in certain situations, we would certainly give consideration to more detailed scrutiny taking place in a private session lest it compromise future deployments and increase risks to the safety of both public and officers. This will no doubt also be an issue for the Justice Committee's careful consideration once you have had an opportunity to digest the Chief Constable's response.

Clearly, we will ensure that any further consideration given by the SPA to the policing of this legislation is highlighted to the Committee to inform its ongoing consideration of this issue.

Vic Emery, Chair, Scottish Police Authority
10 May 2013

Justice Committee

20th Meeting, 2013 (Session 4), Tuesday, 18 June 2013

Inquiry into purposeful activity in prisons

Note by the clerk

Purpose

1. This paper invites the Committee to consider the response from the Scottish Government on the report of the Committee's inquiry into purposeful activity in prisons.

Background

2. Members will recall that the Committee conducted its inquiry into purposeful activity in prisons from January to March 2013. In addition to taking oral and written evidence, the Committee conducted a series of visits to a number of prisons throughout Scotland. The Committee published its report of the inquiry on 28 March 2013 in which it made a number of recommendations.

Response

3. The Scottish Government and the Scottish Prison Service (SPS) have submitted a joint response to the Committee's report which is attached in the annexe to this paper.

4. In the covering letter, the Cabinet Secretary for Justice welcomes the overall direction of the recommendations which he considers are in line with the Government's Strategy for Justice in Scotland and the outcomes being pursued by the Organisational Review of the SPS. The joint response is very positive and overall the Committee's recommendations have been accepted.

5. In addition to the detailed joint response provided, in his letter the Cabinet Secretary highlights a number of developments in terms of purposeful activity.

6. A senior manager has been appointed to design and take forward a new strategic policy for purposeful activity. The intention is for the Committee's recommendations as well as the SPS's organisational review to form the cornerstone of this work. The response indicates that the organisational review will be published in the summer and a revised strategy will be drafted by early 2014 (recommendations 4 and 5).

7. A review of throughcare is also being taken forward which will focus on the needs of short-term offenders. A pilot is taking place at HMP Greenock which is testing the potential for an expanded role for prison officers in supporting offenders in their first few weeks after release. An evaluation of this pilot will be conducted.

8. The letter also confirms that it is an intention of the SPS to maximise the use of technology, in particular the wider use of video conferencing technology to deal with

some routine prison activities in order to free up prison officer time to focus on offending behaviour, rehabilitation and throughcare.

9. The needs of young offenders is also highlighted as a priority in breaking the cycle of offending at the earliest opportunity. In the letter it is noted that the SPS is working collaboratively with Education Scotland and the wider statutory and voluntary sectors to create a skills development and learning environment at HMYOI Polmont.

10. The SPS will provide the Committee with a copy of the organisational review in the summer and feedback on the strategic review of purposeful activity when it becomes available.

HM Chief Inspector of Prisons for Scotland Annual Report

11. Members may recall that the decision to take forward an inquiry into purposeful activity arose from a recommendation made by HM Chief Inspector of Prisons for Scotland in his annual and inspectorate reports. His annual report for 2012-13 was published at the beginning of June in which the Committee's recommendations were welcomed by the Chief Inspector. In particular, he strongly supported the recommendation that the SPS draft a strategy relating to purposeful activities.

Conclusion

12. In terms of the inquiry, the Committee is under no obligation to undertake any further work. However, a number of issues are raised in the response on which the Committee may wish to be kept updated.

13. In particular, the SPS has committed to provide the Committee with the outcome of its operational review when it is completed in the summer. In terms of the strategic review of purposeful activity, the indication is that it will be drafted in early 2014 (recommendations 4 and 5). The SPS has also committed to provide the Committee with feedback on the review.

14. The Committee also has the option of making a bid to the Conveners' Group seeking a slot for a committee debate on the report. However, Members may wish to await the outcome of the ongoing reviews before deciding whether it wishes to do so.

Recommendations

15. The Committee is invited—

- **to note the joint response to the report from the Scottish Government and the Scottish Prison Service;**
- **to agree to await the publication of the SPS's organisational review, due to be completed in the summer;**
- **to agree to await an update on the strategic review of purposeful activity when it becomes available; and**
- **to consider whether it wishes to make a bid to the Conveners' Group for a committee debate on the report.**

Inquiry into purposeful activity in prisons

Joint response by the Scottish Government and the Scottish Prison Service

I am grateful to the Justice Committee for its positive consideration of purposeful activity in prisons. The Committee has undertaken a thorough inquiry which has involved a range of activity including site visits to prisons, talking to the men and women on the ground, Governors and prisoners as well as obtaining a wide range of both written and oral evidence. I welcome the overall direction of the recommendations which are in harmony with both the Scottish Government's Strategy for Justice in Scotland and the direction of travel that is being pursued by the Organisational Review of the Scottish Prison Service (SPS).

The recommendations

I have discussed the recommendations in detail with Colin McConnell, Chief Executive of the SPS as the majority of the recommendations are directed to SPS for action. This letter and annexed table is our joint response to the recommendations set out in the Committee's report of 28 March.

The SPS is committed to fully contributing to reducing reoffending and agrees that purposeful activity is critical in achieving this goal. I am therefore pleased to announce that SPS have appointed a senior manager to design and take forward a new strategic policy for purposeful activity. This appointment will provide an opportunity to have a root and branch review of purposeful activity in prisons to ensure that such activity is meaningful, can be measured in a useful way and provides overall direction for prisons. The recommendations in the Committee's report and the SPS Organisational Review will form the cornerstone of this strategic work.

It would perhaps be useful if I provide some further context to our responses to the individual recommendations:

Purposeful activity and the SPS Interventions Policy

The Scottish Government and the Scottish Prison Service welcomes and shares the Committee's views that purposeful activity is crucial to the rehabilitation and the reintegration of prisoners back into society. This is reflected in the SPS's Interventions Policy that supports the management of offenders in custody. Purposeful activity is an integral part of this policy which seeks to ensure that each offender has access to a package of interventions that reflect their individual risk and needs. Clearly, appropriate and meaningful purposeful activity is essential to addressing in particular, an offender's needs in a way that can help reduce reoffending and support rehabilitation. The SPS is already reviewing the practical delivery of purposeful activity in prisons. The Committee's findings will make a valuable contribution to that review and to the wider strategic considerations being developed as part of the end to end Organisational Review which will be published in the summer.

Transforming the Scottish Prison Service

The Organisational Review will herald a new chapter in the life of SPS; its work with offenders will be reinvigorated and further aligned with the Justice Strategy for Scotland with the needs of individual offenders at its core. Whilst the Organisational Review will not report until the summer the SPS is not standing still; work is being taken forward to build a new prison for women offenders at HMP Inverclyde and this is an exciting opportunity to transform the way in which we manage women offenders. Whilst the best of the existing interventions and collaborative initiatives currently in place for female offenders across the SPS will be further nurtured and developed, the delivery of a vibrant regime focused on reducing reoffending will be significantly enhanced by its delivery in a prison designed exclusively for women offenders.

The Purposeful Activity Strategy

The Committee has helpfully set out in its recommendations a range of issues for inclusion in a purposeful activities strategy including involvement of third sector organisations; and guidelines for Governors on engagement with those organisations as well as guidance more generally. We agree with the Committee that a strategic overview of purposeful activity is needed to provide not only a framework for consistent delivery but also one that promotes innovation and responsiveness to the needs of both the offenders and where possible, their local community. The needs of all offender groups will be considered in the review of purposeful activity including remand prisoners and short term offenders.

Short Term Offenders

The Scottish Government is determined to tackle the revolving door of short term prolific offenders. Phase 2 of the Reducing Reoffending Programme is focused on making sure people who have offended access services and make the most of opportunities so that they fulfil their responsibilities as citizens and move away from offending. A review of throughcare will focus on the needs of short term offenders.

SPS is also beginning to target short term offenders through its work at HMP Low Moss and HMP Greenock. HMP Low Moss is currently developing a regime that supports short term offenders through early identification of their basic needs. The prison has also introduced arrangements for specifically engaging with those who are sent to prison for the first time to help minimise the contagion effect which it is believed can be a factor in progression to further offending. At HMP Greenock a throughcare project is underway which is testing the potential for an expanded role for prison officers working across the community/prison/community continuum in support of existing statutory and voluntary services providers to better supporting and direct offenders in the first few weeks after their release, which is generally accepted to be a period of high risk and instability for offenders. We will evaluate this pilot initiative and will look to build on the experience gained and lessons learned to better inform how SPS' most impactful resource, its staff, can be more fully utilised in the future in order to enhance the likelihood of reductions in the number of previous offenders reoffending..

Use of Technology

Both the Scottish Government and the SPS are keen to maximise the use of technology in both the court and prison setting. Our response to recommendation 10 highlights that prison officers do not routinely escort prisoners to court; there has been a contract in place for such escorts since 2004. The Scottish Government and the SPS fully supports the wider use of video conference technology and the use of technology more generally to deal with some routine prison activities that would then free up the very valuable prison officer resource to focus on offending behaviour work, rehabilitation and throughcare.

Prison Design

SPS plans to maximise the opportunities for meaningful work and purposeful activity in order to make a more discernible contribution to the rehabilitation of offenders. The need to better understand and exploit the potential of current and emergent technologies is recognised by SPS. A project is currently underway to identify potential technological solutions that can enable and support plans to improve services, including those linked to purposeful activities.

It is worth keeping in mind however that despite the Scottish Government's significant and on-going investment in the Service's infrastructure, there will always be particular design and construction challenges and some may prove extremely difficult if not uneconomic to overcome. However, SPS' commitment is to utilise technology to a greater degree than before so as to maximise the time available for officers to engage constructively with offenders. The Scottish Government has made significant investment in the prison estate in excess of £500m over the past 6 years and our new prisons are designed to allow a greater degree of flexibility of access to a range of work and activities.

Education and Young Offenders

A number of the recommendations focus on education and meeting the particular needs of young people in custody. Meeting the needs of this section of the prison population is a particular priority for the Scottish Government and the SPS as breaking the cycle of offending at the earliest possible opportunity has the potential to help generate and sustain a longer term reduction of the prison population as well as other desirable social and economic benefits.

The SPS is also committed to a radical change to the way that young people in custody are engaged and supported. Working collaboratively with Education Scotland, and the wider statutory and voluntary sectors progress is already being made to create a skills development and learning environment at HMYOI Polmont that will enhance the life chances of many of the young people who are sent into custody there and generate improved employability and related employment opportunities for young people on leaving custody. An enhanced and redefined approach to purposeful activity will be a key component of the developing strategy.

I trust that the above response and attached table are helpful in setting out our detailed response. I look forward to continued engagement with the Committee on this issue. I can confirm that:

- SPS will provide the Committee with a copy of the Organisational Review when it is published in the summer; and
- SPS will provide the Committee with feedback on the strategic review of purposeful activity when it is available.

Kenny MacAskill
Cabinet Secretary for Justice
21 May 2013

SCOTTISH GOVERNMENT AND SCOTTISH PRISON SERVICE RESPONSE TO THE JUSTICE COMMITTEE'S INQUIRY INTO PURPOSEFUL ACTIVITY IN PRISONS- 28 MARCH 2013

	Committee conclusion and recommendation	Response
1.	Purposeful activities are an important way of delivering support and the Committee calls for the provision of purposeful activities to be at the centre of rehabilitation policies delivered in prisons.	<p>The Scottish Government and Scottish Prison Service welcomes and shares the Committee's views that the access and uptake of purposeful activity across the prison estate is crucial to the rehabilitation and reintegration of prisoners back into society as contributing citizens.</p> <p>As we made clear during evidence sessions purposeful activity is already seen as an integral part of the SPS's intervention policy that supports the management of offenders in custody. The core principle of the interventions policy is to be able to provide, throughout the time spent in custody, an appropriate package of interventions tailored to address individual offender's particular risk and needs. Providing meaningful and productive purposeful activity is particularly relevant in contributing to the successful rehabilitation of short term offenders whose offending is often underlined by need rather than high risk. SPS has appointed a senior manager to carry out a root and branch review of purposeful activity to ensure that such activity is meaningful, contributes to reducing reoffending and can be measured in a useful way.</p>
2.	The Committee notes the definition of purposeful activity set out in the 2011 Rules but does not think it takes account of the broad range of factors which research shows strongly contribute to offenders likelihood of reoffending such as contact with family during imprisonment. Calls on the Scottish	<p>The SPS accepts this recommendation.</p> <p>SPS agrees that there are areas of activity which are not currently included in their measure of purposeful activity which are valuable in contributing to the well-being of the offender, aid the rehabilitative process and contribute to reducing reoffending. The Committee's Inquiry has been helpful in identifying areas which are beneficial and should be</p>

	Government to give consideration to whether the definition should be revised to take into account these activities.	properly considered as purposeful activity. Amongst the areas that we have initially identified for inclusion in the definition of purposeful activity are: family contact including contact with children, chaplaincy and faith support and peer mentoring support. The Strategy review (see 4 below) will consider more fully how the definition of purposeful activity should be extended and where appropriate will make recommendations for changes to the Prison Rules so that these activities are properly recognised.
3.	Welcomes the Chief Executive of the SPS's positive approach since taking up post and his intention to review the operation of the SPS within the wider context of the local community and partner organisations. Invites the Chief Executive and Cabinet Secretary to update the Committee on the operational review.	The SPS intend to publish the internal review of the organisation in the summer and will provide the committee with a copy. Thereafter the SPS would be very happy to meet with the Committee to discuss the review in person.

<p>4.</p> <p>5.</p>	<p>Calls for the SPS and SG to draft a purposeful activity strategy as part of the operational review and recommends that the SPS's strategy include individual prison plans setting out how each prison will deliver the aims and objectives of the strategy within each prison.</p> <p>The Committee agrees that any strategy for delivering purposeful activity must recognise the valuable role that a range of third sector organisations play in reducing reoffending. Such a strategy must, however,</p> <p>include guidelines to assist individual prisons to manage their relationships with third sector organisations to maximise the benefits of such partnership working.</p>	<p>The SPS accepts this recommendation. The organisational review will provide a strategic response to many of the concerns raised by the Justice Committee and will herald the beginning of a transformational change programme for the organisation. The review will include taking forward a new approach to our offender engagement, rehabilitation and reintegration practices, partnership working and Performance Improvement.</p> <p>As described in the response to recommendation 1 the SPS has appointed a senior manager to carry out a review of purposeful activity and a revised strategy will be drafted by early 2014.</p> <p>SPS recognise the valuable role that third sector organisations play in reducing reoffending. It currently has a Model Framework for working in partnership with the third sector. SPS will review this as part of its Strategy review to ensure that it remains fit for purpose and that it is in bedded in current practice across the prison estate.</p>
<p>6.</p>	<p>The Committee recommends that the strategy should be flexible to allow Governors to retain their autonomy within each establishment whilst, at the same time, providing some stability within regimes where there is a change of Governor.</p>	<p>The SPS accepts this recommendation. The strategy will set out the corporate policy and strategic direction for purposeful activity. As the Committee recognise, the purposeful activity strategy needs to set direction and at the same time provide sufficient flexibility to enable Governors to shape purposeful activity to meet the needs of individual offenders, the local environment and make most effective use of the available community support.</p>

7.	<p>The Committee recognises that the design of some prison buildings creates additional challenges to the prison services in facilitating access for activities. Where this is the case, the Committee would welcome further information on how the Prison Service is developing solutions to this problem within the existing structures. The Committee also strongly recommends that the easy movement of prisoners around the establishment in a context of safety and security are key considerations in the design of new prisons or upgrade of existing prison facilities in the future.</p>	<p>The SPS accepts this recommendation. SPS recognises that in many prisons, particularly the older prison estate the design makes access to purposeful activity more difficult. The SPS will be looking at ways to improve access and to make the most efficient use possible of the facilities available. The effective movement of prisoners around prisons is also complicated by the number of prisoner groups that a prison holds that require to be kept separate. For example sex offenders are managed separately from mainstream prisoners and would not move around the prison in the same area at the same time.</p> <p>Where SPS have been able to build a “new” prison in its entirety for example at HMP Low Moss and HMP Grampian, they have built them to a design which allows for easier movement of prisoners as they recognise the benefits this provides. Where SPS have had to build new prisons in phases, on existing sites (such as HMP Edinburgh and HMP & YOI Polmont) such efficiency of design has not always been possible. The design of HMP Inverclyde will ensure that there is easy access to activities.</p>
8.	<p>The Committee recognises that the movement of prisoner groups between prisons and sometimes overcrowded conditions are an unfortunate feature of the prison system. The strategy, therefore, should address how it will protect the provision of purposeful activities in these circumstances.</p>	<p>The SPS accepts this recommendation. As described in response to recommendation 7 the prison population comprises a number of prisoner groups who need to be separated for a variety of reasons. This together with the prison population being over design capacity, which has encouragingly reduced this year, leads to challenges in the provision and consistent delivery of purposeful activity across the estate.</p> <p>The review of purposeful activity will consider what can be done to mitigate any degradation in access to purposeful activity caused by</p>

		necessary prisoner movements throughout the prison estate.
9.	The Committee recognises that it is difficult for individual prisons to provide sufficient staff resources to ensure all workshop activities can proceed despite staff changes and absences. The Committee does, however, believe that more could be done to ensure the continuity of these activities in these situations and highlights this as an issue to be included in the strategy on purposeful activity and reflected in the individual prison plans.	The SPS accepts this recommendation. SPS is grateful to the Committee for recognising the difficulties it faces in ensuring that all purposeful activity continues where there are staff changes and absences. The SPS seeks to minimise disruption wherever possible however where staff have specialist skills that are not readily replaced some disruption occurs. SPS accept that more could be done to ensure continuity of service provision and this will be included in the review of the purposeful activity strategy.
10.	The Committee is aware that the movement of prisoners between prison and courts diverts staff resources from delivering purposeful activities. The Committee believes that the wider use of video conference technology could avoid the need for some prisoners to travel to court and, thus, free up more prison officers to deliver activities. The Committee recommends, therefore, that the Scottish Government consider this issue as part of its court reforms.	<p>Escort services are currently delivered by G4S so there is no impact on prison resources in relation to their movement to court, however emergency escorts e.g. to hospital require SPS staff resources that may reduce availability of purposeful activity delivery.</p> <p>SPS is part of the National Cross Justice Video Conferencing Project within the Scottish Government Making Justice work programme. The Project is a cross agency initiative which is designed to support development, testing and implementation of the application of video technology across the justice system in Scotland, building on best practice and modern technology.</p> <p>The SPS is currently working on a project establishing the capability to conduct video conferencing with the courts and for prisoner's legal agents to be able to conduct confidential consultations with their clients via video link. This involves 2 pilot projects, one in respect of video link with the High Court and the other with legal agents carrying out</p>

		<p>consultations by video link from their offices with their clients and will be incrementally rolled out across 8 prisons.</p> <p>The evaluation of the High Court project this is scheduled to be concluded by June 2013. The pilot project connecting legal agents to prisons has not yet commenced but has been provisionally scheduled to begin during May 2013.</p>
11.	<p>The Committee is concerned about the inconsistencies of access to purposeful activities across the prison estate and recommends that the Scottish Government and SPS address this in the strategy for purposeful activity.</p>	<p>The SPS accept this recommendation and that there is a need to ensure a more consistent approach to purposeful activity in all prisons where that is possible.</p> <p>There are a number of reasons why inconsistencies are evident across all prisons. As the Committee recognises in recommendation 6 above there are clear advantages to continuing to allow Governors discretion on what they provide, taking account of their particular facilities and population group. Differences arise because some activities are provided by third sector partners who may work in some prisons or for some particular prisoner group but not in/with others.</p> <p>SPS also accept that there is a need to develop partnerships across the Justice Community, as well as with other agencies and community partners to ensure that the interventions that begin within the custodial environment can continue to be effective in the wider community.</p>
12.	<p>The Committee agrees with those stakeholders who suggest that the SPS should use timetables to schedule prisoners' participation in purposeful activities and urges the SPS to introduce them as</p>	<p>Timetabling</p> <p>The SPS will look at how they can optimise activity in all prisons including timetabling as part of its Strategy review. The Committee may</p>

<p>soon as possible. Further, the Committee has concerns that, although prisoners have individual plans, their significance is not always recognised in what is provided. The Committee also agrees that using computerised prisoner management systems would benefit public sector prisons and is concerned that these have not been installed. The Committee asks the SPS what the installation of a computerised system would cost and what consideration it has given to investing in these systems across the prison estate.</p>	<p>be interested to know that as part of the project to transform the learning environment in HMP & YOI Polmont SPS is working with Education Scotland who will amongst other things provide advice on timetabling activities.</p> <p>Information Technology</p> <p>There is currently a project underway within SPS that is looking at how to enhance prisoner access to IT. The project will consider a number of IT options including:</p> <ul style="list-style-type: none"> • Self-service “kiosks” A self-service “kiosk” similar to the HMP Addiewell model which allows prisoners to view appointments, request referrals to different services etc. Such a system then would free up staff time to focus on offending behaviour work. • Secure Communications Secure integrated communications portals such as a prisoner’s telephone service, video-conference facilities and secure messaging that would allow prisoners to communicate directly with their family and service providers. • Throughcare and Learning Secure web portal access to statutory public services for access to information on benefits, housing and healthcare etc. through an approved referral system. It could also provide secure bespoke learning environments. <p>All of the above proposals will require significant investment and it is not</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		currently possible to quantify the costs, however to roll this out across the prison estate it is likely to be in the millions of pounds.
13.	The Committee notes the concerns highlighted relating to some prisoners' lack of experience of a working routine and recognises the important role that the Prison Service should play in developing this during custody in order to rehabilitate and best prepare the prisoner for life on release. The Committee recommends that the Scottish Government and SPS address this in any strategy on purposeful activities.	SPS accept this recommendation and will include within the revised Strategy specific guidelines to ensure that all prisoners are encouraged and incentivised to engage in activities with the aim of engendering a work ethic. SPS will in particular look at best practice across the estate where for example at Low Moss officers acting as Case Managers assist prisoners to plan their day.
14.	The Committee shares the concerns of many that some prisoners have unlimited opportunity to watch television. The Committee agrees that a reasonable amount of time to watch television is fair as part of a prisoners' relaxation time. The Committee recommends, however, that guidelines regarding the appropriate amount of television viewing time be included in the strategy on purposeful activities.	The SPS note that the Justice Committee recognise that prisoners should be allowed a reasonable time to watch television and SPS accept the wider premise that an appropriate balance needs to be struck between meaningful and purposeful activity and leisure and that both contribute to providing a structured environment to enable offenders to address their offending. SPS accepts that there needs to be a clear understanding of when it is appropriate to watch television and indeed participate in other leisure activities. That is why when SPS designed the new HMP Low Moss systems were put in place so that a fully automated system can automatically switch off power to TVs whilst for example still retaining power for lights and this can be done for a group of cells or for individual cells. Similar technology will be available in HMP Grampian. However no other prison has this system and introducing it estate wide is likely to pose significant technical challenges and will be expensive.

		<p>SPS therefore confirm in tandem with the Strategy review it will conduct an audit across all prisons to establish the feasibility of limiting access to technology at certain times of the day. As part of the Strategy SPS will consider guidelines for appropriate viewing time and how it can ensure that can be adopted estate wide.</p>
15.	<p>From the evidence received, and members' observations during their prison visits, the Committee recognises the good work that prison education centres do in providing a supportive learning environment. The Committee notes the representations made to it, however, that aspects of the delivery of education services could be significantly improved and recommends the Scottish Government and SPS consider these in the strategy for purposeful activities.</p>	<p>The SPS accepts this recommendation. The SPS makes a significant investment in the provision of education that ranges from support for basic learning to more advanced learning levels. The SPS also delivers a core assessment tool to identify particular learning and numeracy needs so that appropriate support can be given to develop these skills. Education and vocational training are key components of the package of purposeful activity delivered in prisons.</p> <p>As part of the Strategy review SPS will consult with both education providers (Motherwell College and Carnegie College) on how to maximise education opportunities.</p>
16.	<p>In particular, the Committee believes that it would be advantageous for information about first time offenders' educational attainment, such as school reports, to be made available to the SPS upon the offenders' imprisonment. This would supplement the information about prisoners' educational qualifications and literacy and numeracy needs that is currently gathered during the induction process.</p>	<p>The SPS agrees and, as a priority, is already exploring with Education Scotland and Skills Development Scotland how to get access to this information as soon as the offender is admitted to custody.</p>

17.	<p>The Committee strongly agrees that secure access to the internet is both achievable and highly desirable to provide a learning environment which is comparable to that in the community. Not only would this support staff and learners but it would also help prisoners continue their learning in the community following their release. The Committee appreciates that there are security concerns but highlights the evidence submitted to it that these can be addressed. The Committee has been informed that the SPS is currently reviewing this policy and calls on this review to be concluded as soon as possible to enable internet access to be provided to education centres across the prison estate.</p>	<p>The response to recommendation 12 outlines the work that SPS is currently undertaking in respect of the wider use of Information Technology including for education and learning.</p>
18.	<p>The Committee is also concerned that the SPS prisoner wages policy, by paying work activities a higher wage than learning activities, does not recognise the value of education. The Committee has not been given a reason why this disparity exists. The Committee agrees that this would seem to discourage participation with learning activities and urges the Scottish Government and SPS to review this policy as a matter of urgency.</p>	<p>The SPS accepts this recommendation and will review the prisoner wage earning policy as part of the purposeful activity strategy to ensure that there is no disincentive to attending education.</p> <p>The Committee may find it helpful to have some details on the current prisoner wage earning policy:</p> <p>There is a range of prisoner wages paid ranging from £5 (unemployed) – £21(work placements in Open conditions). Education is paid within the mid-range (£11), along with accessing Vocational Training and Approved Activities.</p>

		<p>The policy provides that prisoners will not be disadvantaged by attending education. For example if a prisoner earns £7 per week in a work party and chose to go to part-time education he would receive the pro rata increase of the education wage of £11. Similarly if a prisoner was earning £13 in catering, and chose to go to part-time education the prisoner would retain the wage of £13.</p> <p>Certain ‘skilled’ jobs in prison will require a higher level of literacy and numeracy, have achieved relevant qualifications and be able to fulfil the role with little or no staff supervision, and as such are paid at a higher rate than education. Therefore prisoners may be required to attend education to evidence appropriate levels of attainment before they can apply for roles that pay at the higher rate.</p> <p>Similarly there are “essential” jobs that require significant training and certification that also may be required to work shifts, at weekends and required to be covered 365 days a year such as Catering, and are therefore also paid a higher wage.</p> <p>The SPS policy is to incentivise learning by encouraging prisoners to participate in education so that there are better employment opportunities both inside and outside prison – in prison; if a prisoner gains appropriate literacy and numeracy skills they may be able to obtain a job in the higher wage bracket –on release; if a prisoner has gained such skills his employability prospects will have improved.</p> <p>The review will consider whether this policy has unintended consequences in creating any disincentive to prisoners attending education.</p>
--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

19.	<p>The Committee recognises the concerns raised in a number of written submissions that prisoners' special educational needs are often not identified during the prison induction process and believes that this situation must be addressed. The Committee welcomes the Chief Executive of the SPS's commitment to consider this issue, and the potential role that occupational therapists might play, as part of the national guidance panel on young offenders (YOs). The Committee is of the view, however, that this is as much of an issue for the adult prison population as for YOs and recommends that this issue should be addressed within the strategy for purposeful activities.</p>	<p>The SPS accept this recommendation and will include this in its Strategy review and will consult with the College of Occupational Therapists in this regard.</p>
20.	<p>The Committee notes the concerns raised by a number of stakeholders relating to the opportunities remand prisoners have to participate in purposeful activities. The Committee recommends that the Scottish Government and SPS give this matter focused consideration when drafting the strategy on purposeful activity.</p>	<p>The SPS accepts this recommendation and will include a review of the opportunities available for remand prisoners in its strategy for purposeful activity.</p>
21.	<p>The Committee remains very concerned about the small number of short term prisoners (those serving sentences of four years or less) who participate in purposeful activities. The Committee</p>	<p>The SPS accepts this recommendation. The core principle underlying the work of the organisational review is improving staff engagement and motivating short term offenders to participate in rehabilitation and reintegration activities.</p>

<p>recognises that there are particular difficulties in engaging with this category of prisoners for a number of reasons; for example, the length of some short term sentences and the lack of incentives to participate. The Committee strongly believes, however, that, given the fact that reoffending rates are highest amongst short term prisoners, greater efforts must be made to persuade them to participate in activities which will support their rehabilitation. The Committee believes that the SPS, supported by the Scottish Government, must give further thought about how to address this as a matter of priority.</p>	<p>There are a number of initiatives being taken forward in SPS aimed at the short term prisoner population. For example at HMP Greenock 3 new innovations are being piloted. (1) End to end case management for short term prisoners (2) Throughcare support officers and (3) Community Integration Units for short term prisoners.</p> <ul style="list-style-type: none"> • End to end case management for short term prisoners is underway. This project was initially piloted with the women offenders held at Greenock but is now being rolled out to male offenders. Each short term prisoner gets an appointed prison officer as their case manager who in conjunction with the prisoner draws up a management plan. The plan identifies their needs and relevant interventions; builds on their personal goals and objectives and focuses on long term re-integration. This level of throughcare is normally only available to long term prisoners. • Throughcare support officers have been appointed to work inside and outside the prison supporting offenders in the first few weeks of their release which we know is a very vulnerable time for offenders. • Community Integration Units (CIUs) are not new to SPS and have been in operation for women offenders in HMP Aberdeen and HMP Inverness. The project at HMP Greenock to build two CIUs within the grounds of the prison for men and women means that local short term prisoners will be given the opportunity to develop and enhance independent living skills, allowing them to engage with community based services, doing training in employability and education, and supporting family contact. <p>At HMP Low Moss the Positive Impact Programme has been introduced</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p>to minimise the impact of prison on first time in custody offenders by enhancing/maintaining protective factors such as family, friends, employment, and external agency support. It will provide offenders with up to 16 weeks (depending on need) of intense support to address their needs through modular interventions or approved activities. This will for example include participation in interventions to address problem solving, substance abuse, emotional management as well as participation in healthy eating/life skills classes. Offenders can also participate daily in education classes (20 attend regularly) on subjects such as IT, literacy and numeracy. This work is supported by the Family Contact Officer, Prisoner Manager Officer and 6 other trained staff delivering group work.</p> <p>The Scottish Government and SPS are also working in partnership to take forward a pilot at HMP Edinburgh, Perth, Corton Vale and Greenock that will take forward new approaches to core screening the throughcare needs of short term offenders (as noted in response to recommendation 25).</p>
22.	The Committee asks that the Scottish Government consider the proposed requirement that internal prison reports are made available to the judiciary during court proceedings when its court reform policies are finalised in the coming months.	The Scottish Government is not currently considering a specific requirement for internal prison reports to be used during court proceedings. However, through our Making Justice Work Programme we are exploring how we can make better use of criminal justice IT systems to enable the collation of relevant data from a range of valuable sources to develop an offender management plan for short term offenders post release.

23.	<p>The Committee welcomes the SPS's intention to give a renewed policy focus to the different needs and challenges associated with YOs. The Committee agrees that it is imperative to tackle YOs' offending behaviour to ensure that their first experience of the prison system is also their last and welcomes the proposal to give HMYOI Polmont a stronger educational and vocational focus. The Committee expects updates from the national guidance panel established by the SPS to inform this proposal as this policy takes shape.</p>	<p>The SPS accepts this recommendation.</p> <p>The SPS continues to give this work priority. Along with Education Scotland, the SPS organised a partnership event on 8 May to generate commitment to creating positive opportunities for young people in custody. The outcome was a statement of intent from partners about how relevant organisations could contribute to creating a learning and developmental environment for HMP & YOI Polmont. The SPS's youth strategy group will be the governance group for this work and will provide progress reports to the Committee.</p>
24.	<p>The Committee welcomes the SPS's new approach to providing better support to prisoners' families and fully endorses the planned improvements of visitor facilities and, in particular, family centres across the estate. The Committee would welcome a response to the claim put forward by Families Outside.</p>	<p>The SPS published standards for family visits in March underscoring the importance of encouraging and maintaining positive relationships as part of the rehabilitative process. Guidance clarifying that visits including "bonding" visits should only be restricted on grounds of child protection will be issued to Governors by the end of May.</p>
25.	<p>The Committee would welcome an update on the timescale for the Scottish Government's review on throughcare.</p>	<p>The review of Throughcare for short term offenders is a key project in Phase 2 of the Reducing Reoffending Programme which will report in 2015. An international and Scottish-focused evidence review will be published in the summer of 2013 which will inform the policy development of throughcare review including identifying what the effective elements of throughcare are. The review will take forward a comprehensive set of options aimed at improving the outcomes of short term offenders leaving prison, by designing better processes informed by</p>

		<p>feedback; better information sharing; and more strategic commissioning of services in custody and in the community. It will involve 4 main workstreams:</p> <ul style="list-style-type: none"> • Explore options for extending the scope of the national directory of interventions which has been live since April 2012. Future development of the directory will be co-ordinated with the review of community justice structures so its scope and functions are matched to the needs of the commissioning and delivery bodies. • Improving access to throughcare support in custody- this will build upon the pilots established in Phase 1 of the Reducing Reoffending Programme in HMP Perth, Cornton Vale and Greenock for testing new approaches to screening the throughcare needs of short term offenders. And by using this information, develop a meaningful community integration plan for each offender which will be followed up by a named member of the social work team on the offender's release. Phase 2 of this work will look at what works for possible roll out of this approach across the prison estate. • Improving access to support in the community- we will explore new models of throughcare support with criminal justice social work and third sector organisations to implement new approaches to support offenders as they reintegrate back into their communities. This will be informed in large part by the lessons learnt and evaluation of the Reducing Reoffending Change Fund Year 2 and 3 delivery of mentoring projects to offenders. • In tandem with the above workstreams is the need to improve
--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		short term offenders' access to universal services across the whole of the public sector. This has been recognised as a complex and therefore longer term workstream which will require a range of engagement and buy-in across the public and voluntary sector. It will aim to deliver clearer protocols for offenders ability to access a range of universal services to help them turn their lives around on release from prison.
26.	The Committee welcomes the increased emphasis being given to throughcare as it is vital that an adequate support package is provided to prisoners on release which recognises the broad range of factors which may have caused their offending behaviour.	The SPS continues to promote its own initiatives (see the response to recommendation 21) and contributes to the Scottish Government's work to develop supportive throughcare for short term offenders. The SPS will also be fully involved in the mentoring Public Social Partnerships sponsored by the Reducing Reoffending Change Fund.
27.	The Committee remains of the view that statutory throughcare should be available to short term prisoners and urges the Scottish Government to consider this as part of its SPS strategy, as well as part of its redesign of the community justice system.	The Scottish Government review of throughcare project detailed in response to recommendation 25 will be exploring a range of options for throughcare policy and legislation including the feasibility of extending statutory throughcare to all offenders serving sentences of less than four years. The Committee will appreciate that this may have significant cost implications for the whole of the public sector and all possible options will need to be evidence based in conjunction with key partners, particularly local authority criminal justice social work, housing providers and the NHS.
28.	The Committee recognises that there is tremendous scope for developing mentoring programmes within prisons and outwith in throughcare provision and welcomes the SPS's approach. The Committee believes that there are	The development of mentoring schemes is fully embedded into Phase 2 of the Scottish Government's Reducing Reoffending Programme. The Committee will be aware that the Reducing Reoffending Change Fund partners (Scottish Government, Scottish Prison Service and the Robertson Trust) recently announced (11 April 2013) a further

	<p>many other opportunities for utilising a mentoring scheme and recommends that these are given due consideration in the strategy on purposeful activity.</p>	<p>investment of £7.7m of spending which has been allocated to six mentoring projects for offenders which will operate over the next two years. These projects include a national service for women offenders led by SACRO, a national service for prolific young male offenders led by the Wise Group and four other regional or specialised projects:</p> <ul style="list-style-type: none"> • Includem will work with difficult, chaotic and violent offenders • VASLan will combine mentoring with an emphasis on employability- recruiting volunteer mentors from business and industry • Action for Children & Barnardo's who will focus on young male offenders; • Tayside Council on Alcohol who already have a track record for delivering mentoring to offenders in their region. <p>The projects will establish a network of mentoring schemes which will work inside and outside prison as part of our approach to ensure that prison staff, social workers and voluntary organisations better prepare prisoners for release into the community. An independent evaluation of the projects will report back in 2015 and we will of course be happy to share the report with Committee members. The outcome from the evaluation will be critical to exploring new approaches to receipt of care in the community and access to universal services such as housing and benefits.</p>
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Justice Committee

20th Meeting, 2013 (Session 4), Tuesday, 18 June 2013

Fatal road accidents

Note by the clerk

Purpose

1. This paper invites the Committee to consider next steps in relation to its work on fatal road accidents.

Background

2. The Committee first considered a request from the Scottish Campaign against Irresponsible Drivers (SCID) to examine a report by academics at the University of Dundee on fatal road accidents at its meeting on 11 September 2012. A summary of the Committee's work in this area is as follows:

- commissioning a SPICe briefing on the report (on 11 September 2012);
- seeking written views on the report from the Crown Office and Procurator Fiscal Service (COPFS), Association of Chief Police Officers in Scotland (ACPOS), COSLA¹, and the Scottish Government (on 6 November 2012);
- inviting comments from SCID and the report's authors on the above responses and seeking clarification on a number of matters from ACPOS and COSLA (26 February 2013);
- hearing evidence from SCID, one of the report's authors, Police Scotland and COPFS on 7 May; and
- including a recommendation on the release of investigative documents to families of road death victims on request in the Committee's Stage 1 report on the Victims and Witnesses (Scotland) Bill.

3. The report, *Access in Europe* by a bereaved family to information gathered during an investigation into a fatal road collision², contained four recommendations, as follows:

- (1) The establishment of an independent multi-disciplinary road collision investigation body carrying out in-depth safety investigations of each fatal road collision should be considered by the Scottish Government as part of its road safety strategy. (*Road safety is within the Infrastructure and Capital Investment Committee's remit.*)

¹ COSLA stated in its response that it was unable to comment on this matter at the level of detail required.

² *Access in Europe* by a bereaved family to information gathered during an investigation into a fatal road collision (July 2012). Available at: http://www.dundee.ac.uk/law/smallnews/edocs/scid_report.pdf

- (2) The family of a road death victim should have a legal right to obtain copies of the investigation documents on completion of the investigation or on conclusion of criminal proceedings. Such a right should be set out in primary legislation. *(This is within the Justice Committee's remit.)*
- (3) In the interim, the Road Death Investigation Manual (RDIM), the Crown Office and Procurator Fiscal Service (COPFS) Book of Regulations and the Lord Advocate's Guidelines to Chief Constables should be amended to include a duty to provide a copy of the investigation documents to the family of a road death victim on completion of the investigation or on conclusion of criminal proceedings. *(While the Justice Committee's remit is engaged, it would be for COPFS and the Lord Advocate to establish what to include in their guidelines, in consultation with stakeholders.)*
- (4) Scotland's road safety framework should make provisions for the post-impact care phase of an effective road safety strategy. *(As mentioned earlier, the road safety strategy is within the Infrastructure and Capital Investment Committee's remit, although the Health and Sport Committee's remit may also be engaged in relation to post-impact care.)*

4. Recommendation 2 on disclosure of investigation documents is considered to be within the scope of the Victims and Witnesses (Scotland) Bill, although any individual amendment to this effect would be considered for admissibility on a case-by-case basis. It is with this in mind that the Committee arranged the evidence session with SCID, Police Scotland, COPFS and the report's authors to take place on 7 May prior to the conclusion of its Stage 1 scrutiny of the Bill. Much of the evidence session on 7 May focused on recommendation 2. In considering its Stage 1 report on the Victims and Witnesses (Scotland) Bill, the Committee agreed to include the following recommendation on fatal road accidents arising from the University of Dundee report:

"The Committee welcomes the Cabinet Secretary's indication that he would be happy to engage with the Crown Office and Procurator Fiscal Service to ensure that the appropriate level of information is given to families of road death victims wherever possible and we would welcome an update on these discussions. Nevertheless, we believe that a statutory recommendation may give greater certainty to victims that they would be entitled to receive the information they request at the end of criminal proceedings."³

5. The Scottish Government is expected to respond formally to this and all other recommendations in the Stage 1 report in advance of the Stage 1 debate, which is due to be held on Wednesday 19 June.

Next steps

6. The Committee is invited to consider whether it wishes to undertake any further action on the University of Dundee/SCID research on fatal road accidents, for example, it could agree to wait until the conclusion of Stage 2 of the Victims and Witnesses (Scotland) Bill. Alternatively, the Committee could

³ The Scottish Parliament Justice Committee. 7th Report, 2013 (Session 4). *Stage 1 report on the Victims and Witnesses (Scotland) Bill*, paragraph 73. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/64072.aspx>

conclude its consideration of the matter, on the basis that it has taken the issue as far as it can.